

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, (954) 797-1101

SUBJECT: Quasi Judicial Hearing: Rezoning

TITLE OF AGENDA ITEM:

ZB 11-2-00 H.J. Zimmerman & Assoc., Inc., petitioner/South Post, Inc., owners -
General Address: 4200 Shotgun Road/Generally located on the east side of Shotgun Road
approximately 700' north of Orange Drive.

REPORT IN BRIEF:

The petitioner is proposing to rezone 308 acres of land from A-1, Agricultural District to E, Estate District, in order to accommodate a development of 308 detached single family home development.

The applicant is requesting to rezone to a zoning district that was repealed approximately 4 years ago. Other properties in the Town which had rezoned to the E District prior to its repeal in 1996, retained their E District zoning. In this instance, a settlement agreement referred to as the 1995 Pasadena and Imagination Farms Agreement, specifically the First Amendment thereto, grants the property owner contractual rights to E District zoning, even given the repeal of the district, as confirmed by the Town Attorney in an opinion attached hereto.

The request is consistent with the Residential (1 du/ac) land use plan designation of the property, as the overall density of development on the property will not exceed 1 du/ac, as allowed by the existing A-1 District zoning classification. The request can also be evaluated with an overall positive finding of fact relative to the Section 12-307 review criteria for rezoning requests.

At the Town Council meeting of February 21, 2001, Council raised some concerns regarding canal easements reflected on the survey and not reflected on the plat. It was recommended that staff meet with CBDD to solve Council's concerns. On February 27, 2001, staff met with CBDD, the developer and the attorney for the developer. As a result of the meeting, the applicant is in the process of revising the site plan and seeking the release of the right-of-way reservations with CBDD. Staff will update the Town Council at the March 7th meeting.

PREVIOUS ACTIONS:

- The Town Council tabled this item to the February 7, 2001 meeting (motion carried 3-2, Councilmembers Cox and Weiner dissenting, January 17, 2001).
- The Town Council tabled this item to the February 21, 2001 meeting (motion carried 4-1, Councilmember Cox dissenting, February 7, 2001).
- The Town Council tabled this item to the March 7, 2001 meeting (motion carried 5-0, February 21, 2001).

CONCURRENCES:

- The Planning and Zoning Board recommended denial (motion carried 3-2, Mr. Davenport and Mrs. Moore dissenting, January 10, 2001).

FISCAL IMPACT: Not Applicable

RECOMMENDATION(S): Motion to approve.

Attachment(s): Planning report with back-up, land use map, subject site map, and aerial.

Application #: ZB 11-2-00
South Post Rezoning

Revisions:

Exhibit "A"

Original Report Date: December 11, 2000

**TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation**

APPLICANT INFORMATION

Owner

Name: South Post, Inc.

Agent

Name: H.J. Zimmerman & Associates, Inc.

Address: 9000 Sheridan Street

Address: 9000 Sheridan Street

City: Pembroke Pines, FL 33024

City: Pembroke Pines, FL 33024

Phone: (954) 431-7111

Phone: (954) 431-7111

Background Information

Date of Notifications: January 3, 2001

Number of Notifications: 52

Application Request: The applicant is proposing to rezone 308 acres of land from A-1, Agricultural District to E, Estate District, in order to accommodate a development of 308 detached single family homes utilizing E District development standards.

Address/Location: 4200 Shotgun Road; Generally located on the east side of Shotgun Road, beginning approximately 700' north of Orange Drive, and extending 1950 feet north of SW 36 Street.

Land Use Plan Designation: Residential (1 du/ac)

Existing Use: Vacant/Agricultural

Proposed Use: 308 single family lots.

Parcel Size: 308.315 acres (13,430,190 square feet)

Surrounding Land Use:

North: Sherwood Farms residential development

South: I-75 and Vacant Land

East: S. Fl. Council of Boy Scouts/Vista View County Park (former landfill)

West: Vacant Land and I-75

Land Use Designation:

North: Residential (1 du/ac)

South: Transportation and Commercial

East: Recreational/Open Space

West: Transportation and Residential (1 du/ac)

Surrounding Zoning:

North: R-1, Estate Dwelling District

South: A-1, Agricultural District

East: RS, Recreation/Open Space District

West: A-1, Agricultural District

Zoning History

Related Zoning History: This parcel is subject to a 1995 settlement agreement, as amended in March 1996, commonly referred to as the “Pasadena Imagination Farms” and “ICW” Agreement. The agreement stipulates that the Town will rezone the subject property (and an adjacent 33 acres, together known as the Pownall Residential Property) to the E, Estate District in order that the property be subject to the jurisdiction of the Town. The First Amendment to the agreement stipulates that, in the event the Town repeals or modifies the E District classification as it existed at the time of the agreement, such repeal or modification will not affect the subject property, and it will continue to be entitled to be rezoned to the E District zoning classification as contemplated by the agreement.

Previous Request on same property: Council approved the South Post Plat for the subject property via Resolution No. 2000-264, on November 15, 2000.

Development Plan Details

Development Details:

The Applicant’s SUBMISSION indicates the following:

1. The site area consists of approximately 13,430,190 square feet (308.315 acres) for the proposed development of 308 single family lots. The plat provides for a 100’ access opening approximately a one-third of a mile south of the north limits of the plat and two 50’ temporary construction access openings with a non-vehicular access line along the remaining portion of the west limits of the site.

2. Should Council approve this application and rezone the subject property to the E District, the property must be developed consistent with the terms of the 1995 Settlement Agreement, which provides for a minimum open space ratio of .40 and a minimum lot area of 20,000 s.f.; a maximum of 349 residential units (including the adjacent 33 acres which are not included in this application) notwithstanding Code Section 12-57, 12-58 and 12-59 which helps determine site capacity/density, at a density not to exceed 1 du/ac, with approximately 314 of 349 lots as 35,000 s.f. or greater gross area and 35 lots as 20,000 to 35,000, but in no event with more than 52 lots smaller than 35,000 s.f.. Under the "E" district, minimum lot sizes are not measured as net dry land area, and may include water.
3. The applicant's site plan, currently undergoing staff review but conceptually attached hereto for Council's information, provides for 65 foot wide street buffer, 60' wide landscape buffer along a portion of the east limits together with a recreational trail.
4. Drainage for the proposed project will be provided by an on-site lake system which will drain into the Shotgun Road Canal which will ultimately outfall into the C-11 Canal. Details of the drainage system will be provided with the site plan submission.

Applicable Codes and Ordinances

Land Development Code Section 12-307, Review for Rezoning.

Comprehensive Plan Considerations

Planning Area: The proposed project is within the Planning Area No. 2 generally includes the westernmost section of the Town north of Orange Drive and south of SW 14 Street, and bound on the west by Interstate 75 and on the east by Nob Hill Road and Pine Island Road. The predominant existing and planned land use in single-family residential at a density of one dwelling unit per acre. The Broward County Landfill site, now closed, is programmed for redevelopment as a park site. The Boy Scout Camp is located to the north of the landfill site and is also used for recreational and open space purposes. A major land holding, Imagination Farms, constitutes the last remaining dairy operation in Davie and has developed half of the site with 400 single-family residences. Several larger parcels are currently being platted, in preparation for marketing or development as estate residences and commercial projects.

Flexibility Zone: The proposed plat is in Flexibility Zone 113.

Broward County Land Use Plan: None

Concurrency Considerations: Approval shall be subject to sufficient capacity of the regional road network as determined by Broward County. In the event sufficient capacity is not met, the plat shall be deemed denied by the Town of Davie.

Applicable Goals, Objectives & Policies: None

Staff Analysis

The applicant is requesting to rezone to a zoning district that was repealed approximately 4 years ago. Other properties in the Town which had rezoned to the E District prior to its repeal in 1996, retained their E District zoning. In this instance, a settlement agreement referred to as the 1995 Pasadena and Imagination Farms Agreement, specifically the First Amendment thereto, grants the property owner contractual rights to E District zoning, even given the repeal of the district, as confirmed by the Town Attorney in an opinion attached hereto.

The request is consistent with the Residential (1 du/ac) land use plan designation of the property, as the overall density of development on the property will not exceed 1 du/ac, as allowed by the existing A-1 District zoning classification. The request can also be evaluated with an overall positive finding of fact relative to the Section 12-307 review criteria for rezoning requests.

Findings of Fact

Section 12-307(A)(1)

- (a) The proposed change is not contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;
- (b) The proposed change will not create an isolated zoning district unrelated and incompatible with adjacent and nearby districts;
- (c) Existing zoning district boundaries are logically drawn in relation to existing conditions on the property proposed for change;
- (d) The proposed change will not adversely affect living conditions in the neighborhood;
- (e) The proposed change will not create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated w i t h permitted intensities or densities of the underlying land use plan designations, or otherwise affect public safety;
- (f) The proposed change is not expected to adversely affect other property values;
- (g) The proposed change will not be a deterrent to the improvement or development of other property in accord with existing regulations;
- (h) The proposed change does not constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public;
- (i) There are not substantial reasons why the property cannot be used in

accord with existing zoning.

(j) The proposed zoning designation is not an appropriate designation to enhance the Town's tax base given the site location relative to the pattern of land use designations established on the future land use plan map, appropriate land use planning practice, and comprehensive plan policies directing land use location.

Staff Recommendation

Recommendation: Based upon the above and the overall finding of facts in the positive, and specifically the policy decision made by the Town Council in 1995 to grant the applicant the contractual right to rezone to the E District, staff recommends **APPROVAL** of application number ZB 11-2-00.

Planning and Zoning Board Recommendation

The Planning and Zoning Board recommended denial (motion carried 3-2, Mr. Davenport and Mrs. Moore dissenting, January 10, 2001).

Exhibits

1. Applicant's Justification Letter
2. Town Attorney Legal Opinion
3. Conceptual Site Plan
4. Land Use map
5. Subject Site map
6. Aerial

Prepared By: _____

Reviewed By: _____

JUSTIFICATION LETTER

Response to rezoning review criteria per Land Development Code Section 12-307, for
Imagination Farms West.

- (a) The proposed change is/is not contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;

The subject site is land use planned "Residential (1 du/ac)". The proposed "E" zoning district is consistent with the 1 dwelling unit per acre land use designation. Therefore, the proposed rezoning is not contrary to the adopted comprehensive plan.

- (b) The proposed change will/will not create an isolated zoning district unrelated and incompatible with adjacent and nearby uses;

The subject property is surrounded by existing residential homes designated residential 1 du/ac to the north, vacant land designated residential 1 du/ac to the west (across Shotgun Road), vacant land designated residential 1 du/ac to the east, Vista View Park (formerly known as the Broward County land fill) also to the east, and vacant land designated commercial to the south. Therefore, the proposed "E" zoning district is compatible and related with adjacent and nearby uses.

In addition, a landscape and recreation trail easement varying from 30 feet to 40 feet will be provided along the north and east property lines of the project, along with lake areas averaging approximately 100-feet in width along the same lines. The vacant residential property to the west is also under the same ownership and will be buffered by a landscape berm and Shotgun Road.

- (c) Existing zoning district boundaries are logically/illogically drawn in relation to existing conditions on the property proposed for change;

The proposed rezoning boundaries will follow the existing property lines which are consistent with the residential 1 du/ac land use designation for this site. Therefore, the proposed zoning district boundaries are logically drawn in relation to existing conditions on the property.

- (d) The proposed change will/will not adversely affect living conditions in the neighborhood;

The project is to be developed as detached single-family dwelling units not to exceed 1 dwelling unit per acre. Therefore, there is no impact on the living conditions of the abutting neighborhoods as the proposed use is consistent with the existing land use designation.

- (e) The proposed change will/will not create or excessively increase automobile and vehicular traffic congestion, above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety;

The proposed "E" zoning district is consistent with the existing residential 1 du/ac land use designation. Therefore, automobile and vehicular traffic congestion will not increase above that anticipated by the existing land use. In addition, traffic concurrency as determined by Broward County will be required to be met at the time of plat approval through the Town of Davie and Broward County. All roadway improvements are required to be completed prior to the first Certificate of Occupancy.

- (f) The proposed change will/will not adversely affect other property values;

The proposed "E" zoning district is consistent with all abutting land uses. The proposed project will be a private gated community with an average home value of \$350,000 to include parks, lakes, landscape berms and recreational trails which could essentially increase the values of abutting neighborhoods. In addition, the abutting properties are either vacant and under the same ownership designated for residential land use, a Broward County Park, and commercial land, with the exception of the homes to the north and northeast. Therefore, the proposed rezoning will not adversely affect other property values.

- (g) The proposed change will/will not be a deterrent to the improvements or development of other property in accord with existing regulations;

Should the proposed rezoning be approved, all zoning regulations will be met at the time of site plan approval and will not affect the ability of other property to be improved.

- (h) The proposed change will/will not constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public;

The request for the "E" zoning district is consistent with the terms of the 1996 Settlement Agreement between the Town of Davie and Pasadena at Imagination Farms, Inc. It was anticipated within this document that the subject property would be rezoned to the "E" zoning designation, therefore, the proposed change does not constitute a grant of special privilege to an individual owner as contrasted with the welfare of the public.

- (i) There are substantial reasons why/why not the property cannot be used in accord with existing zoning:

The current A-1 zoning district does not permit development of the property in accordance with the "E" zoning regulations. The "E" zoning regulations are consistent with the underlying land use designation and the 1996 Settlement Agreement between the Town of Davie and Pasadena at Imagination Farms, Inc., which anticipated that the property would be developed utilizing the "E" zoning district standards.

- (j) The proposed zoning designation is the most appropriate designation to enhance the Town's tax base given the site location relative to the pattern of land use designations established on the future land use plan map, appropriate land use planning practice, and comprehensive plan policies directing land use location:

The subject site is land use planned Residential (1 du/ac) as identified on the Town of Davie future land use map. The proposed "E" zoning district is consistent with the land use, therefore, the proposed use is the most appropriate designation given the site location relative to the pattern of land use designations, good planning practice, and comprehensive plan policies.

MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
Telephone (954) 584-9770


TOWN OF DAVIE
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ADM. SVC. DEPT.

MEMORANDUM

DATE: November 22, 2000

TO: Geri A. Baluss, Planning Aide

COPIES TO: Mayor and Councilmembers
Town Administrator
Jeff Katims, AICP, Planning and Zoning Manager

FROM: Monroe D. Kiar 

RE: Control No. 000916
South Post Plat P I-2-00

Request: I have been asked to give a legal opinion concerning the E Zoning on the "Pownall Residential".

Answer: This memorandum is not to be considered precedent for any other parcel referenced as "E" Zoning. In this circumstance, while there are some questions concerning the applicability of the Agreement, in light of the Settlement Agreement, the property owner should be allowed to develop this property in accordance with the "E" Zoning.

Discussion:

Paragraph 4 of the First Amendment to the Settlement Agreement dated March 6, 1996 provides as follows:

In the event the Town repeals or modifies the "Estate (E) District" zoning classification as it currently exists in the Town Code, such repeal or modification will not effect the Pasadena property or the Pownall residential property and the Pasadena property and the Pownall residential property will continue to be entitled to be rezoned to the "Estate (E) District" zoning classification contemplated by the agreement.

There are some arguments against the allowing of the E Zoning District in this circumstance, but under all of the circumstances, the Town's position concerning this property is best if it allows the E Zoning on this parcel. This is a unique circumstance and it is not precedent for any other situation.

The lawsuit filed by the owner/developer regarding the nearby commercially designated properties does not affect staff's ability to review the site plan and what staff submits to the Council. Let me address this issue in further detail. I am sure that you agree, and believe that the Council agrees, that there are times where there are good faith disputes. When those disputes cannot be resolved, litigation is a reasonable way to resolve the dispute. Citizens have a right to seek redress from the Courts if they feel that they have been aggrieved by the Town. That citizen or property owner is, and should be, treated the same whether or not there is a litigation. I appreciate very much your asking the question about this matter because it is a reasonable question to ask legal counsel, and it is wise to ask about the potential impact of an action when there is a potential interrelation, and with all of the myriad of potential situations there might be a circumstance where there was an interrelation that Staff would not be aware of but legal counsel would be aware of. It is most likely that there will not be an interrelation, but I think you are very prudent to ask.

DEVELOPMENT SERVICES DEPARTMENT
Planning & Zoning Division

MEMORANDUM
PZ 11-41-00

TO: Monroe Kiar, Town Attorney
FROM: Jeff Katims, AICP, Planning and Zoning Manager *JK*
THRU: Mark A. Kutney, AICP, Development Services Director *MAK*
DATE: November 29, 2000
RE: Control No. 000916; Imagination Farms/Pownall Residential


Monroe, please confirm that your opinion on the "E" zoning for the above-referenced property is that the property owner must apply for a rezoning to "E" rather than the Town simply applying "E" District standards to this property during site plan review. You did verbally indicate they should have to apply for a rezoning, but your written opinion does not specify the method for obtaining the use of "E" zoning standards.

Thank you.

MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

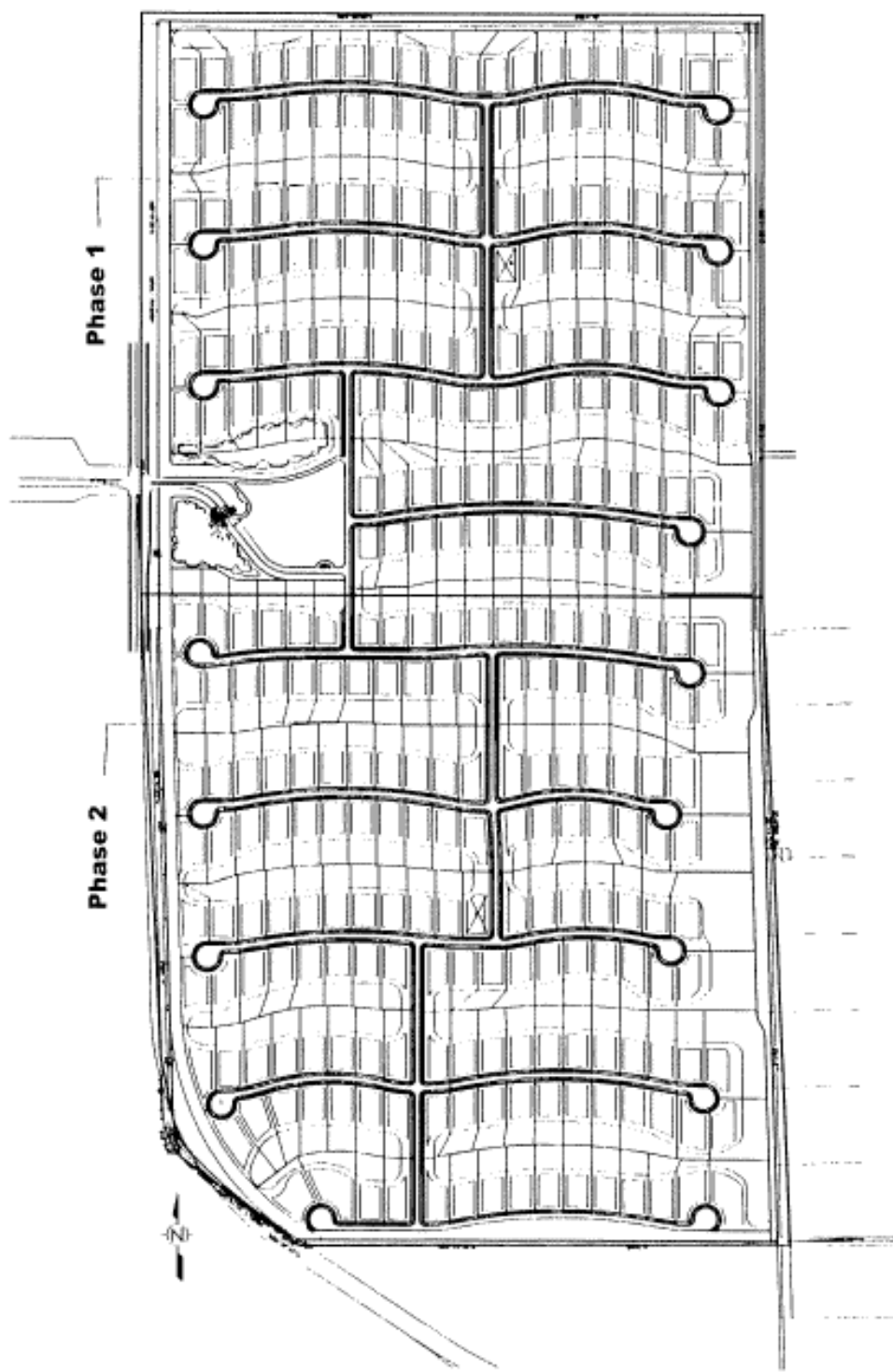
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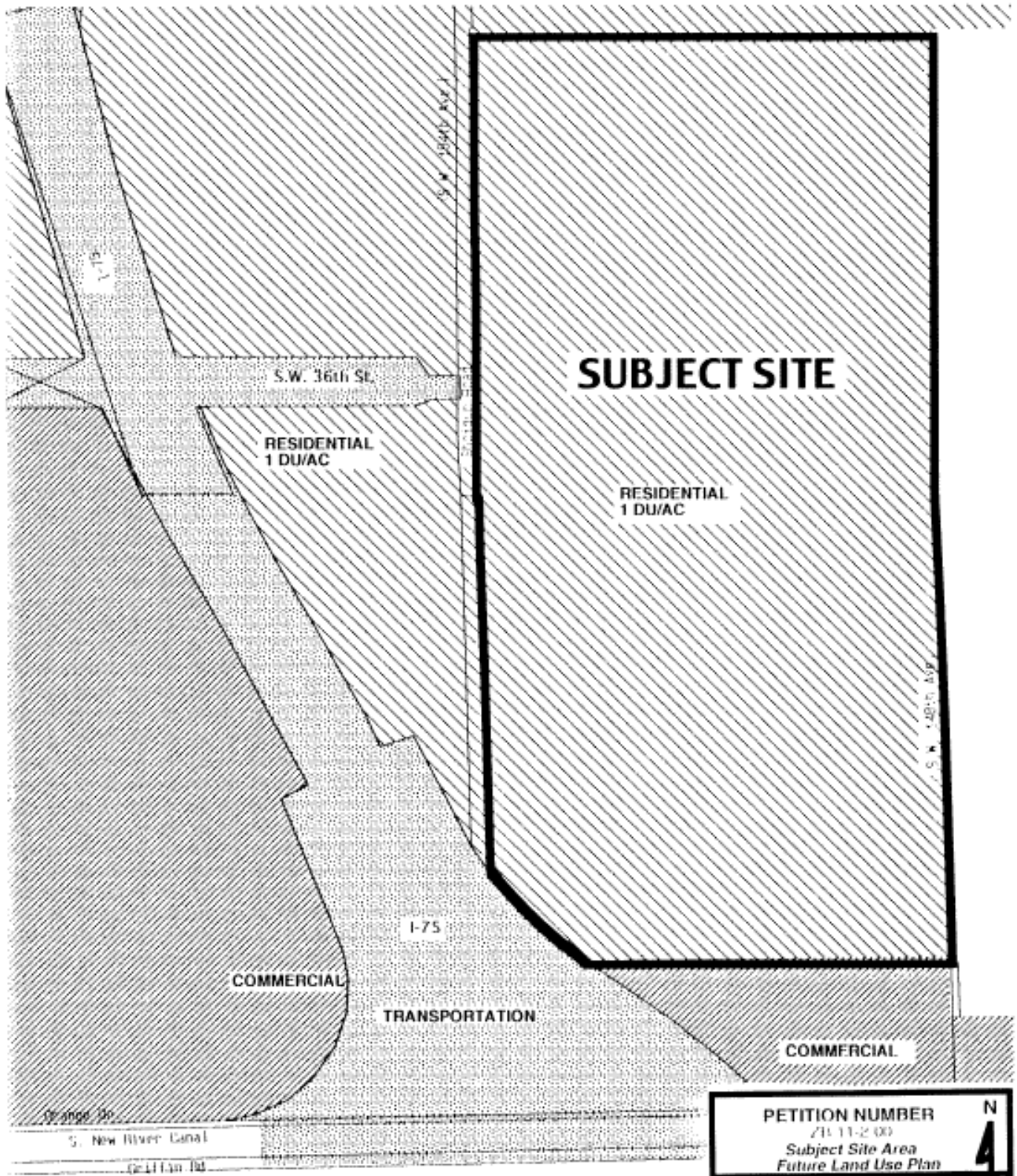
MEMORANDUM

DATE: December 5, 2000 --
TO: Jeff Katims, AICP, Planning and Zoning Manager
CC: Mark Kutney, AICP, Development Service
Mayor and Councilmembers
FROM: Monroe D. Kiar 
RE: Control Number 000916
Imagination Farms/Pownell Residential
Your Memorandum of November 29, 2000

The 1995 Settlement Agreement and the First Amendment to the Settlement Agreement require that the applicant file the necessary applications with the Town seeking a rezoning of the subject property from the present A1 Agricultural District zoning classification to the "B" District and the applicant must comply with all "E" District standards. The Settlement Agreement and its Amendment do not constitute a rezoning of the property from agricultural to estate, and does not obligate the Town to necessarily approve such an action.

MDK/gmv





PETITION NUMBER		N 4
7/11-2-00		
Subject Site Area Future Land Use Plan		
PREPARED 12/18/00 Scale 1" = 100'		
BY THE PLANNING & ZONING DIVISION		

